

Message Text

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TO SECSTATE WASHDC 5686
INFO AMEMBASSY BONN
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E.O. 11652: N.A.
TAGS: PINT, SP
SUBJECT: SENATE BEGINS CONSIDERATION OF CONSTITUTION

REF: MADRID 8467

1. SUMMARY: SENATE COMMITTEE CONSIDERATION OF THE
DRAFT CONSTITUTION BEGAN AUGUST 9, AND SHOULD CON-
TINUE FOR AT LEAST TWO WEEKS, AFTER WHICH THE DRAFT
WILL PASS TO THE FULL SENATE. THE PRESENTATION OF
1,254 AMENDMENTS HAS GUARANTEED THAT SENATE DELIBERA-
TIONS WILL BE MORE TEDIOUS AND DRAWN-OUT THAN HAD
PREVIOUSLY BEEN HOPED. WE ANTICIPATE FEW IMPORTANT
SUBSTANTIVE CHANGES, HOWEVER, AND BELIEVE THE UCD-PSOE
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PACT, ALTHOUGH CURRENTLY STRAINED, WILL HOLD AND
GUARANTEE RELATIVELY SMOOTH SAILING FOR THE CONSTITU-
TION THROUGH THE UPPER HOUSE. THE KNOTTIEST ISSUE
CONTINUES TO BE REGIONAL AUTONOMY, WHERE BOTH THE
GOVT AND THE BASQUE PNV APPEAR TO HAVE ASSUMED
POSITIONS FROM WHICH IT WILL BE EXTREMELY DIFFICULT
FOR THEM TO BUDGE. EVEN SO, UNDER SECRETARY ARTURO

MOYA, WHO WORKS DIRECTLY FOR VICE PRESIDENT FERNANDO ABRIL, SUAREZ' NEGOTIATOR WITH THE BASQUES, TOLD THE POLITICAL COUNSELOR AUG 9 THAT ABRIL WAS OPTIMISTIC THAT AGREEMENT WOULD BE REACHED. END SUMMARY.

2. THE SENATE GOES TO WORK. THE SENATE'S CONSTITUTIONAL COMMITTEE, CHAIRED BY SOCIALIST (PSOE) SENATOR JOSE FEDERICO DE CARVAJAL, ON AUGUST 9 BEGAN ITS CONSIDERATION OF THE DRAFT CONSTITUTION ALREADY APPROVED BY THE CONGRESS OF DEPUTIES (REFTEL AND PREVIOUS). OBSERVERS AND MANY PARTICIPANTS ALIKE HAVE WATCHED WITH DISMAY AS THE VARIOUS SENATE PARLIAMENTARY GROUPS AND A NUMBER OF THEIR INDIVIDUAL MEMBERS, MOTIVATED IN PART BY THE DESIRE TO DEMONSTRATE THAT THE SENATE IS NOT JUST THE CONGRESS'S RUBBER STAMP, HAVE PRESENTED A TOTAL OF 1,254 AMENDMENTS. THE VAST MAJORITY OF THESE AMENDMENTS ARE STYLISTIC IN NATURE, BUT THE VERY NUMBERS INVOLVED ARE LIKELY TO DRAG OUT SENATORIAL CONSIDERATION WELL INTO SEPTEMBER. ALTHOUGH SENATE LEADERS HAD ORIGINALLY SET AN INFORMAL TIME LIMIT OF TWO WEEKS ON COMMITTEE DELIBERATIONS, IT ALREADY APPEARS THAT COMMITTEE WORK PROBABLY WILL TAKE CONSIDERABLY LONGER.

3. THE CARRY-OVER CONSENSUS. UCD AND THE PSOE, TOGETHER, HAVE A STRONG MAJORITY BOTH IN THE CONSTITUTIONAL COMMITTEE AND THE SENATE AS A WHOLE. CON-

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SEQUENTLY, SO LONG AS THE TWO-PARTY AGREEMENT ON THE DRAFT REACHED IN THE CONGRESS HOLDS, IT SHOULD ENCOUNTER NO SERIOUS PROBLEMS IN THE UPPER CHAMBER. THIS CONSENSUS HAS CURRENTLY BEEN STRAINED BY UCD'S SENATE GROUP'S PRESENTATION OF AMENDMENTS TO ARTICLE 25, ON EDUCATION, AIMED AT STRENGTHENING "FREEDOM OF CHOICE" AND MAKING LESS AMBIGUOUS CONSTITUTIONAL PROVISION FOR STATE SUPPORT OF CHURCH SCHOOLS. THE PSOE REACTED VIGOROUSLY TO THIS GAMBIT BY UCD SENATORIAL CONSERVATIVES, CHARGING THAT IT THREATENED CONSENSUS AND COULD BRING THE SOCIALISTS TO OFFER THEIR OWN AMENDMENTS TO OTHER "ALREADY PACTED" ARTICLES, SUCH AS 15, WHICH NOW EXPLICITLY RECOGNIZES THE CATHOLIC CHURCH. VICE PRESIDENT FERNANDO ABRIL IS NOW BACK IN TOWN FROM A BRIEF VACATION, HOWEVER, AND THE CURRENT EXPECTATION IS THAT HE AND PSOE LEADERS WILL CALL A HALT TO THIS SKIRMISH AND PUT THE CONSENSUS BACK TOGETHER IN FAIRLY SHORT ORDER. BROAD APPROVAL OF THE CONSTITUTION CONTINUES TO BE MORE IMPORTANT FOR BOTH UCD AND THE PSOE THAN A "VICTORY" ON ONE OR MORE SPECIFIC ARTICLES.

4. AFFIRMING A SENATORIAL IDENTITY. NEVERTHELESS, DEBATE IN THE UPPER CHAMBER IS CERTAIN TO BE LIVELY, AND PERHAPS AT TIMES EXASPERATING, NOT ONLY DUE TO AP'S RESERVATIONS ABOUT PARTS OF THE TEXT AND CONTINUING DISAGREEMENT WITH THE BASQUES OVER AUTONOMY WORDING, BUT ALSO BECAUSE UCD'S SENATE GROUP IS MORE CONSERVATIVE AND LESS DISCIPLINED THAN ITS CONGRESS COUNTERPART. MOREOVER, THERE ARE SEVERAL SMALLER SENATORIAL GROUPS WHO RESPOND TO NO PARTY DISCIPLINE, AND THERE EXISTS A DESIRE ON THE PART OF A NUMBER OF SENATORS TO DEMONSTRATE THAT THE UPPER HOUSE DOES INDEED HAVE AN INSTI-

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TUTIONAL ROLE TO PLAY. IN ADDITION, A NUMBER OF SENATORS ARE PROFESSORS OF LAW AND EXPERTS ON CONSTITUTIONAL PROCEDURES WHO WOULD REGARD IT AS UNSEEMLY FOR THE SENATE NOT TO MAKE AN IMPORTANT INPUT INTO THE CONSTITUTION. WHILE SENATE PRESIDENT FONTAN AND OTHER SENATE LEADERS ARE SENSITIVE TO THE NEED NOT TO LET DEBATE DRAG ON TOO LONG, THEY WILL BE EQUALLY SENSITIVE TO POSSIBLE CRITICISM THAT THEY HAVE CURBED FREEDOM OF SPEECH BY CLOSING OFF DEBATE TOO SOON. CONSEQUENTLY, THEY WILL PROD THE UPPER CHAMBER ALONG, WHILE ATTEMPTING TO PLACATE ANY LONG WINDED POTENTIAL CRITICS AND

ENSURING THAT THE NECESSARY CONSTITUTIONAL CATHARSIS
IS ACHIEVED IN THE SENATE, AS IT WAS IN THE CONGRESS.

5. IN THIS REGARD PRESTIGIOUS FORMER CORTES PRESIDENT
TORCUATO FERNANDEZ MIRANDA, A ROYAL SENATOR, RECENTLY
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QUIT UCD'S SENATE GROUP TO PASS TO THE MIXED GROUP.
FERNANDEZ MIRANDA ATTRIBUTED HIS MOVE, WHICH CLEARLY
WAS AN ATTENTION-GETTING DEVICE AIMED AT ADDING HIS
VOICE TO THOSE OF OTHER CONSERVATIVES IN THE UPPER
HOUSE, TO ATTEMPTS BY UCD LEADERS TO IMPOSE OVERLY
STRICT PARLIAMENTARY DISCIPLINE ON THE SENATE GROUP.
BECAUSE OF HIS LONG CLOSE PERSONAL RELATIONSHIP WITH
THE KING, SOME OBSERVERS INTERPRET FERNANDEZ MIRANDA'S
SHIFT AS HAVING BEEN COORDINATED WITH -- OR INSPIRED
BY -- JUAN CARLOS, IN ORDER TO DEMONSTRATE HIS
UNHAPPINESS WITH SOME ASPECTS (UNSPECIFIED) OF THE CON-
STITUTION AND WITH THE "PROGRESSIVE" POLITICAL LINE OF
THE GOVT AND UCD. WE JUDGE, HOWEVER, THAT FERNANDEZ
MIRANDA'S MOVE WAS MORE LIKELY A PERSONAL DECISION
MOTIVATED BY HIS OWN CONSERVATISM, PERSONALITY AND
APPARENT DESIRE FOR A MORE VISIBLE POLITICAL ROLE.
GIVEN THE INTIMATE COLLABORATION BETWEEN SUAREZ AND
JUAN CARLOS, WE ASSUME THE KING IS RELATIVELY PLEASED
WITH THE CONSTITUTION AND THAT HE WOULD NOT INSPIRE
OR LEND HIMSELF TO A MACHINATION SUCH AS FERNANDEZ
MIRANDA'S, SINCE IT RUNS CONTRARY TO HIS DESIRE TO
CONSOLIDATE THE MONARCHY BY PLACING IT ABOVE POLITICS.
FERNANDEZ MIRANDA'S ACTIVITIES WILL MERIT CONTINUED
ATTENTION, HOWEVER, PARTICULARLY IN THE CONTEXT OF
CONTINUING ATTEMPTS ON THE RIGHT BY FRAGA, AREILZA
AND OTHERS TO PUT TOGETHER THE "NEW MAJORITY."

5. THE CONTENTIOUS ISSUES. THE GENERAL LINES OF
SENATE DEBATE WILL ALMOST CERTAINLY FOLLOW CLOSELY
THOSE OF THE CONGRESS, WITH DISAGREEMENT FOCUSING ON
SUCH QUESTIONS AS EDUCATION, THE ECONOMIC MODEL AND
REGIONAL AUTONOMY. THERE ALSO WILL BE AN ATTEMPT BY
SOME SENATORS TO MODIFY THE CURRENTLY VAGUE WORDING
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ON THE FUTURE COMPOSITION (EXISTING ARTICLE 64 LEAVES
MUCH TO A FUTURE ORGANIC LAW) AND ROLE OF THE UPPER
CHAMBER, IN ORDER TO PROVIDE FOR A MORE EXPLICIT AND
WEIGHTY ROLE FOR THE FUTURE SENATE.

6. THE BASQUE CONUNDRUM, AGAIN. THE CONSTITUTION'S AUTONOMY PROVISIONS CONTINUE TO BE THE KNOTTIEST PROBLEM. DISAGREEMENT BETWEEN THE GOVT/UCD AND THE BASQUE PNV NOW CENTERS ON THE ADDITIONAL DISPOSITION THAT STATES: "THE CONSTITUTION PROTECTS AND RESPECTS THE HISTORIC RIGHTS OF THE FORAL TERRITORIES. THE GENERAL UPDATING OF THIS FORAL REGIME WILL BE CARRIED OUT, IN ITS CASE, WITHIN THE FRAMEWORK OF THE CONSTITUTION AND OF THE AUTONOMY STATUTES." THE GOVT/UCD CONTINUES TO INSIST THAT BASQUE AUTONOMY MUST BE DEFINED WITHIN THE LIMITS AND IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION, WHILE THE PNV, FOR ITS PART, MAINTAINS THAT THE BASQUE REGION'S HISTORIC FORAL RIGHTS ENDOW THE BASQUE COUNTRY WITH "SOVEREIGNTY," WHICH MEANS THAT BASQUE REPRESENTATIVES SHOULD DEAL AS EQUALS WITH THE CENTRAL GOVT IN MADRID, IN EFFECT OVER THE HEAD OF PARLIAMENT. IN SPITE OF A CONCERTED ELEVENTH-HOUR EFFORT, AGREEMENT COULD NOT BE REACHED ON THIS QUESTION IN THE CONGRESS, AND THE OUTLOOK IN THE SENATE, AS A RESULT, IS NOT AT ALL CLEAR. BOTH SIDES APPEAR TO HAVE ARRIVED AT POSITIONS FROM WHICH IT WILL BE EXTREMELY DIFFICULT FOR THEM TO BUDGE, ALTHOUGH THE PNV CONTINUES TO LEAVE THE DOOR OPEN TO SUPPORT OF THE CONSTITUTION AND HAS BEEN

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CAREFUL NOT TO EXPLICITLY CONDITION EVENTUAL SUPPORT
ON THE ATTAINMENT OF ITS DESIRED CHANGES IN THE
ADDITIONAL DISPOSITION. TOP LEVEL GOVERNMENTAL FIGURES,
INCLUDING SUAREZ AND UCD CONSTITUTION NEGOTIATOR ABRIL,
HAVE PRIVATELY BEEN OPTIMISTIC THAT THE PNV WILL
EVENTUALLY ACQUIESCE TO SOME SORT OF COMPROMISE AND
RECOMMEND TO ITS FOLLOWERS TO VOTE "SI" ON THE CONSTI-
TUTION. TODMAN

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To: STATE
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